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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LUIS GOMEZ, et al., Plaintiffs and Appellants, v. AUTOZONE STORES, INC., et al., Defendants and Respondents.	D054147 (Super. Ct. No. GIC874049)

APPEAL from a judgment and order of the Superior Court of San Diego County, Frederic L. Link, Judge. Affirmed.

Plaintiffs and appellants Luis Gomez, Jose Angel Santana, and Genaro Cortez (sometimes collectively Plaintiffs) sued their former employer, defendant and respondent auto parts retailer AutoZone, Inc. (AutoZone or Employer), and one of its loss prevention investigators, on theories including fraud and false imprisonment. Plaintiffs further claimed that Employer's loss prevention investigative practices were excessively coercive and fraudulent, and therefore amounted to violations of the Unfair Competition Law,

under Business and Professions Code section 17200 et seq. (the UCL; all further statutory references are to this code unless noted).[1]

After jury trial, a special verdict was rendered in favor of AutoZone on the fraud theory. The jury made preliminary findings that Plaintiffs had proven some of the elements of fraud, and had proven some of the criteria for punitive damages entitlement (Employer's malicious, oppressive, and fraudulent conduct). Plaintiffs presented evidence that Employer's loss prevention officers did not always make an adequate investigation before they threatened employees with arrest for theft, and they consistently made false promises of leniency and continued employment in return for a confession, whether or not it was true. However, the jury verdict went on to find that any reliance by Plaintiffs on those false representations was not a substantial factor in causing harm to them, and no damages were awarded.[2]

The evidence at trial showed that two of the Plaintiffs, Gomez and Santana, had ultimately entered guilty pleas and been convicted of criminal charges of theft of Employer's company property, and the other Plaintiff, Cortez, had signed a promissory note admitting to the same kind of theft. The trial court ruled in postverdict proceedings

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1 Employer's loss prevention officer Octavio Jara was a named defendant but was dismissed before trial, and does not appear on appeal, nor does his brother and fellow loss prevention officer for Employer, Ramon Jara (sometimes referred to as O. Jara or R. Jara). Also, Plaintiffs Jesse Valerio's and Juana Morales's actions were dismissed after trial and they are not parties to this appeal.

2 The jury also found that Gomez had not been falsely imprisoned, but the jury was not requested to rule upon the other two Plaintiffs' false imprisonment claims, because they had previously been determined to be time barred. No issues about false imprisonment are argued on appeal.

that Plaintiffs' UCL claim must also fail, for lack of a showing that illegal conduct by Employer had occurred. Plaintiffs brought a motion for new trial, which was denied. (Code Civ. Proc., § 657.)

On appeal, Plaintiffs first argue the trial court erred in denying their motion for new trial, because the court's reasoning included acknowledgments that (1) the jury found fraudulent Employer acts had occurred and (2) Plaintiffs had suffered, but the court (3) nevertheless determined that causation was lacking because "what they did was brought on by their own action." Plaintiffs argue the jury's finding of no causation of harm to them was not supported by the evidence, because they contend the coerced and "false" confessions were the only evidence against them that led to their admissions (criminal pleas and a promissory note). Further, Plaintiffs argue the trial court abused its discretion by unduly limiting expert testimony offered by Plaintiffs about Employer's manual and interrogation practices, because the expert was not allowed to give his opinions about these issues with relation to his review of the deposition evidence regarding the actual interrogations in these cases. (Evid. Code, § 801.)

Plaintiffs also claim error in the court's postverdict ruling of law on the UCL claim, which found that Employer's agents' conduct in interviewing the Plaintiffs did not constitute violations of law, under all the relevant circumstances. Plaintiffs argue the new trial denial was inconsistent with the portions of the jury verdict agreeing that some degree of fraudulent conduct had taken place, and they contend the court should have deemed these Employer practices to be implicitly unfair and to amount to violations of the UCL. Plaintiffs' UCL claims asserted fraud and unfair competition existed,

specifically in Employer's use of fraudulent tactics against their employees, in order to gain an unfair advantage over Employer's business competitors. Plaintiffs now argue public policy should support their continued pursuit of these claims of unfair competition, regardless of their personal circumstances, on the basis that Employer's agents' conduct was likely to deceive members of the public. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 986; § 17203.)

Our review of the record leads us to conclude that the jury verdict finding no causation of Plaintiffs' harm (economic in nature) is supported by substantial evidence, such that these Plaintiffs' individual circumstances, as shown at trial, justify the jury's zero damages award for fraud. Plaintiff Gomez further failed to show any false imprisonment had taken place. Moreover, we agree with the trial court's postverdict ruling on the evidence presented to the jury, and the denial of new trial, finding that no UCL claim of violation of law had been demonstrated under the evidence at trial. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background: Special Verdict Findings

Each of these three Plaintiffs was formerly employed by AutoZone, until he came under suspicion of theft and was interrogated by one or more of Employer's loss prevention managers, and, after signing a confession, was terminated from his job. Their individual circumstances vary somewhat, as will next be described. Our factual summary will be somewhat abbreviated, since Plaintiffs do not challenge those jury findings in the special verdicts that were favorable to them, on certain elements of fraud, as follows:

"1. During the interview of [each Plaintiff], did [loss prevention manager O. and/or R.] Jara make a false representation of an important fact to [Plaintiff]? Yes.

"2. During the interview of [each Plaintiff], did . . . Jara know that the representation of fact was false, or did he make the representation recklessly and without regard for its truth? Yes.

"3. During the interview of [each Plaintiff], [when Jara made the representation] was . . . Jara acting within the scope of his employment for AutoZone? Yes.

"4. During the interview of [each Plaintiff], did . . . Jara intend that [Plaintiff] rely on the representation? Yes.

"5. During his interview with . . . Jara, did [Plaintiff] reasonably rely on the representation? Yes."

However, with regard to the final fraud element, the jury answered "no" to the question of whether each Plaintiff's reliance on the Jaras' representations was a substantial factor in causing harm to the Plaintiff. The jury went on to answer the questions posed to it about whether the following allegations had been proven according to a standard of clear and convincing evidence:

"1. Did [each Plaintiff] prove by clear and convincing evidence that . . . Jara acted with malice, oppression, or fraud when he made a false representation of an important fact to [each Plaintiff] that . . . Jara knew was false, that . . . Jara intended [each Plaintiff] to rely on that fact, and that [each Plaintiff] reasonably relied on? Yes.

"2. Did [each Plaintiff] prove by clear and convincing evidence that AutoZone employee . . . Jara was an officer, director, or managing agent of AutoZone acting in a corporate capacity? Yes."

B. Background: Incidents

We turn now to the claims of these individual Plaintiffs, particularly with reference to causation and damages. We first outline what Plaintiffs have disclosed in their appellate briefs, and then amplify from the record and Employer's version of the facts.[3]

1. Gomez

In November 2005, Gomez was interviewed by R. Jara about missing money at the store. At first Gomez was asked for his help, but then he was accused of stealing money and told he was in big trouble. He felt that Jara would not listen to his denials. After three hours, Jara left to make phone calls to authorities, because Gomez would not admit to the theft. Gomez told him to come back, and said he would admit the theft because he believed, based on Jara's statements about repaying the money without telling anybody else, that it was the only way he could keep his job. After Gomez signed a

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3 We decline the request by Employer to strike the opening brief for failure to set forth a complete and accurate statement of facts. (Cal. Rules of Court, rule 8.204(a)(2)(A); *Singh v. Board of Retirement* (1996) 41 Cal.App.4th 1180, 1182, fn. 1.) We agree with Employer that the Plaintiffs' opening brief is woefully inadequate in that regard, but have determined the better course of action is to exercise our discretion to assess the record and reach the merits of the various claims, even without meaningful assistance from Plaintiffs.

confession, Jara called police, who arrested Gomez and took him to jail. Gomez was later fired.

Gomez told his public defender, Mehrdad Ghassemkhani, that he was innocent, but the lawyer advised him that going to trial was unlikely to be successful because of the confession. Gomez negotiated a plea for time served plus probation. He paid restitution of about $680.[4]

The record also shows that Employer's investigator R. Jara was asked to investigate missing cash at the store, and was given copies of store deposit slips signed by Gomez, that matched certain amounts of money that were reported to be missing by the bank. After being questioned, Gomez told R. Jara that during one of his normal deliveries of cash swept from the registers to the store safe, Gomez pocketed over $1,000, and did so again with lesser amounts. R. Jara testified at trial that he focused in on Gomez because of the documentation he had been given showing that Gomez was the last one to touch a particular deposit envelope, and because the bank records showed that such an amount of money was missing. R. Jara testified that it was not his normal procedure to promise employees that they could keep their job if they confessed, and that his role was to gather the facts and then send them over to another department of Employer, human resources or legal relations, for a determination.

At trial, Gomez (as well as Santana) told this jury that he was now truthfully denying any theft, and he had been lying to the judge who accepted his criminal plea of

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4 During the in limine motions, defense counsel mentioned that both Gomez and Santana had made some restitutionary payments to Employer.

guilty, based on instructions given to him by his criminal defense attorney. His attorney, Ghassemkhani, testified that he had gone over the plea form with Gomez, who made his own decision to plead guilty. There was a form in Gomez's file showing that he had told his defense attorney that he was coerced to plead guilty. It was not unusual for clients to tell Ghassemkhani that they were coerced into confessing, and he heard that every day. Ghassemkhani could not remember giving Gomez specific advice prior to his guilty plea, but he normally advised clients of the pros and cons of pleading guilty, and asked them to make their own decisions. He would normally have asked Gomez to tell him why he felt forced into confessing, but he could not recall any answer that he was given.

2. Santana

In November 2004, Santana was accused by O. Jara of stealing Employer's money, threatened with arrest, and told that Jara would come back tomorrow and get him. Santana denied the accusations, then got the name of a lawyer, Victor Orsatti, and met with him the next morning. Later that day, R. Jara telephoned Santana and asked him to come to the store, and said that R. Jara would handle it personally and would clarify the matter. Since his lawyer Orsatti had told Santana not to meet with loss prevention personnel alone, Santana requested that someone else sit in, but R. Jara refused, and showed him papers that he said were proof of theft. After about two hours, O. Jara joined in, and Santana was told he could not call his lawyer and could not leave to pick up his kids, or else the police would be called. Santana then signed a confession that he said was dictated by the Jaras, and after the police were called, he was immediately arrested.

Santana borrowed money to pay his lawyer, who told him that the District Attorney's office was investigating the matter. Later, Attorney Orsatti prepared a declaration in which Santana denied theft, but the declaration was not filed with the court. Orsatti told Santana that because of his confession, he had little chance of success at trial. In order to avoid a jail sentence, Santana pleaded guilty to felony theft and agreed to pay over $5,000 in restitution to Employer, as well as doing community service and probation.

The record also shows that O. Jara testified to the jury about his investigation into computer records of Employer's accounting system, which showed that someone was responsible for skimming cash payments received from commercial customers, without reconciling them to the cash drawers at the store. Santana's employee identification number showed that he was the one making those transactions, amounting to $5,163 in cash shortages. When Santana received a cash payment, he would electronically transmit the information to corporate headquarters, but would take immediate action to reconcile the cash drawer so that it reflected a zero balance. However, the computer system reported such unposted cash receipts as a "deposit float" on a particular line (262) of the store's monthly profit and loss report.

O. Jara testified that this internal investigation and data were eventually transmitted to the District Attorney's office, because Employer sought to press charges against Santana. The District Attorney's office informed Santana's attorney, Orsatti, about the findings. Santana maintained his innocence to Orsatti, but eventually, after Orsatti discussed the evidence with him, Santana admitted to Orsatti that he had taken

money and acted as if he was sorry (he hung his head). Santana did not explain how the District Attorney's investigation was based on any wrong information.

At trial, R. Jara testified about his interview with Santana. R. Jara showed accounting documents to Santana that showed the inconsistencies in money taken in and money reported. Santana admitted to him that he had taken $2,000. Although R. Jara had evidence to show that more than $2,000 cash taken was attributable to Santana, he did not push the issue, because his training was to ask more questions of the employee, but not to insist on a change in the statement to match the evidence. In conducting investigations, R. Jara gathered the facts and did not always consider an initial interview to be accusatory, although it could turn into one.

3. Cortez

In October 2003, Cortez was at the store just before closing time. Both O. and R. Jara were driving by after a business meeting, and they stopped to see what was going on. They accused Cortez of stealing money and said they had video to prove it. O. Jara told him that they could keep the matter within the company if he confessed and agreed to pay the money back, while keeping his job. Cortez wrote down the confession that O. Jara dictated to him, even though Cortez told him it was not true, and Cortez signed a promissory note in favor of Employer. Although Jara told him he could come back to work in about a week, Cortez learned he was fired when he was told he had a final paycheck waiting for him.

The record also shows that the night the Jaras were driving by, they noticed that a car was pulled up to the front of the store, loaded with bags of merchandise. When they

investigated, they found Cortez and asked him about the bags in the car, which was his, and he told them he had paid for the merchandise. However, he did not have a receipt and later admitted that he had not paid for it. At trial, Cortez testified that his manager told him he could take merchandise home on a trial basis and pay for it later. However, the manager denied this. Also, another employee that Cortez said had rung up the merchandise for him was not working at the store that day, and did not testify on Cortez's behalf.

O. Jara testified at trial about his interview of Cortez, and stated that he decided to get a statement so that Cortez could tell his side of the story. O. Jara did not believe that he needed corroborating evidence in view of the admissions that Cortez made.

C. Lawsuits and Motions

In 2006, Plaintiffs filed their complaint and first amended complaint (FAC), alleging three causes of action: (1) false imprisonment; (2) fraud; (3) unfair competition and unfair trade practices in violation of the UCL. The fraud claim alleges that Employer's loss prevention agents made false promises that they did not intend to keep, about leniency to be afforded an accused employee only if he confessed, such as keeping the matter in house and not involving the police. Plaintiffs contend they were subjected to criminal prosecution based on Employer's procurement of signed confessions containing substantial false information. Plaintiffs pled that they were subjected to humiliation and damage to reputation and employment possibilities, and in some cases, lost their last paycheck if it was used to repay the promissory note (here, only Cortez had signed a promissory note).

In the UCL claim, a private representative claim of unfair competition is pled, specifically, Employer's use of fraudulent interrogation tactics against its employees, in order to gain an unfair advantage over Employer's business competitors. This case does not involve any class action allegations. Plaintiffs requested injunctive relief, such as requiring payment for all hours worked, without deductions for any improper interview and/or promissory note procedures. (§ 17203.)

As background, we note that in previous cases, this court has reviewed other judgments involving incidents in which AutoZone employees made similar claims that they were, after being falsely accused of stealing, allegedly forced to sign a promissory note and terminated without receiving a final paycheck. In *Robles v. AutoZone, Inc.* (Nov. 2, 2004, D041499 [nonpub. opn.]) and in a later opinion, *Robles v. AutoZone, Inc.* (July 22, 2008, D049259 [nonpub. opn.]), we upheld a jury verdict in favor of Robles on the false imprisonment cause of action, awarding him $73,500 compensatory damages and six times that amount as punitive damages. In *Martinez v. AutoZone, Inc.* (Nov. 28, 2006, D047722 [nonpub. opn.]), this court reversed a summary judgment in favor of AutoZone, remanding for further proceedings on the wages claim based on the execution, under these circumstances, of such a promissory note. Both Robles and Martinez testified as witnesses for these Plaintiffs, that as employees, they were accused of theft, then promised leniency and in-house treatment of the matter, if they would sign a confession.

In the case before us, the trial court granted Employer's pretrial motions for summary adjudication of certain issues regarding damages, so that Plaintiffs could not

seek fraud damages resulting from their termination of employment, but only independent fraud damages. (*Hunter v. Up-Right, Inc.* (1993) 6 Cal.4th 1174, 1184-1185.) Also, judgment on the pleadings was granted as to Plaintiffs Santana's and Cortez's first cause of action for false imprisonment (due to the bar of the statute of limitations). Only Gomez's claim on that particular theory went to trial, in addition to the fraud damages and UCL relief requests.

D. Trial and Posttrial Motions

The trial court ruled on numerous motions in limine, as set out in the discussion portion of this opinion. The court ordered that Santana's attorney Orsatti had to disclose his criminal case file, and Santana was not allowed to assert attorney-client privilege against plea bargain testimony by Attorney Orsatti. The exhibits also included Gomez's criminal file from his attorney, public defender Ghassemkhani, who testified about his plea bargain. Both attorneys, Orsatti and Ghassemkhani, testified at trial that they did not encourage or induce these clients to plead guilty, but instead required that they make their own decisions whether to do so. Both attorneys stated that during the criminal proceedings, they were given no reason, as to their respective clients, to doubt that the thefts had taken place and that the guilty pleas therefore had a basis in the facts.

All three Plaintiffs testified about the circumstances of their accusations of theft of company property and the manner in which they were questioned by Employer's loss prevention personnel (as summarized above). Plaintiffs' expert witness, sociologist Dr. Richard Ofshe, testified about his studies of coerced confessions, and his interpretation of the company manual used for training of loss prevention investigators.

Both O. Jara and R. Jara testified about their understandings of their duties and their recollection of the events concerning these Plaintiffs. Also, testimony was presented from Employer's vice president Peter Brennan, who supervised loss prevention activities. The court and counsel discussed the topic of judicial estoppel, based upon the pleas that Gomez and Santana had entered in their criminal matters. However, no definitive ruling was made.

At the close of testimony, the court and counsel discussed jury instructions and the format of the special verdict. After deliberations, the jury returned its special verdict. It found (as above) that although Plaintiffs had showed that important fraudulent misrepresentations had been made by Employer's representatives, Plaintiffs had not proven that any reliance by them on representations made during their interviews by the Jaras was "a substantial factor in causing harm to [Plaintiffs]."

Judgment on the verdict was entered for Employer, including the following order on the section 17200 claims: "In view of the above verdict and the evidence presented at trial, the Court finds that the plaintiffs did not establish their claims for violation of Business & Professions Code section 17200 by a preponderance of the evidence because they failed to prove that Defendants engaged in any unfair or unlawful business practice that would support a violation of that statutory section." (Code Civ. Proc., § 438, subd. (c).)

Plaintiffs brought a motion for new trial, arguing the zero damages award was inadequate and unsupported by insufficient evidence. Also, they claimed prejudicial irregularities in the trial or jury proceedings (bias of jury, lack of adequate UCL ruling).

(Code Civ. Proc., § 657, subds. (1), (5), (6).) Opposition was filed and the matter went to hearing. The trial court initially expressed its understanding that after the fraud verdict, Plaintiffs had decided not to pursue their UCL claim. However, in an abundance of caution and because Plaintiffs strenuously argued that they had preserved that claim, the court heard argument on the equitable issues and issued a ruling of law at the new trial motion proceedings.

Ultimately, Plaintiffs' motion for new trial was denied on all grounds. As to Plaintiffs' claims under section 17200: "The Court agrees with the jury's finding that Autozone did not falsely imprison the plaintiff [Gomez]. The Court further finds, beyond a reasonable doubt, that all three plaintiffs stole from their employer. The Court finds no violation under Business & Professions Code § 17200." Plaintiffs appealed.

DISCUSSION

I

APPLICABLE STANDARDS

This appeal is taken from the order denying a new trial, and we therefore review the order and underlying judgment for legal and evidentiary support. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18; 8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, §§ 137-138, pp. 728-731.) The entire record, including the evidence, is considered in making our independent determination as to whether any error was prejudicial to any substantial rights of the parties. (*Los Angeles v. Decker* (1977) 18 Cal.3d 860, 872 (*Decker*).)

"[A] trial judge is accorded a wide discretion in ruling on a motion for new trial and the exercise of this discretion is given great deference on appeal." (*Decker, supra,* 18 Cal.3d at pp. 871-872; *Plancarte v. Guardsmark, LLC* (2004) 118 Cal.App.4th 640, 645; 8 Witkin, Cal. Procedure, *supra,* § 138, pp. 729-731.) That includes the trial judge's "13th juror" function in weighing the evidence. (*Id.* at § 38, pp. 623-625.) As an appellate court, we do not consider the weight of the evidence, but uphold the judgment on the verdict, if any substantial evidence supports it. (See 9 Witkin, Cal. Procedure, *supra,* Appeal, § 365 et seq., pp. 421-424.)

Here, the motion for new trial was based on contentions that under Code of Civil Procedure section 657, subdivision (5), the zero damages awards were inadequate. When the appellate court reviews the order denying the motion, it does not weigh the evidence on damages, and will reverse a judgment on appeal only if no substantial evidence supports the award. "But the trial judge is not bound by the rule of conflicting evidence and may grant a new trial if the award is against the weight of the credible evidence." (See Code Civ. Proc., § 657, subd. (5); 8 Witkin, Cal. Procedure, *supra,* § 36, pp. 621-622.)

The motion also relied on Code of Civil Procedure section 657, subdivision (6), that insufficient evidence supported the special verdict. When presented with such alleged grounds for new trial, "the trial judge is not bound by any 'rule of conflicting evidence.' The judge does weigh the evidence, and he or she may and should grant a new trial if the verdict or decision is against the weight of the evidence. [Citation.]" (8 Witkin, Cal. Procedure, *supra,* § 39, p. 625.)

Plaintiffs further relied on Code of Civil Procedure section 657, subdivision (1), to claim prejudicial irregularities in the trial or jury proceedings (bias of jury against persons with a criminal record, or the judge's failure to make an adequate UCL ruling; however, no claims of judicial or jury misconduct were pursued through declarations or otherwise, even though some such arguments seem to be made on appeal). (8 Witkin, Cal. Procedure, *supra,* § 27, pp. 611-612.) " 'No accurate classification of such irregularities can be made, but it is said that an overt act of the trial court, jury, or adverse party, violative of the right to a fair and impartial trial, amounting to misconduct, may be regarded as an irregularity.' [Citations.]" (8 Witkin, Cal. Procedure, *supra*, § 25, p. 607.)

In general, the appellate court does not rely on the reasoning of the trial court, nor the specific grounds on which the court reached its conclusion. (9 Witkin, Cal. Procedure, *supra,* § 346, pp. 397-398.) We examine the action of the trial court, not the reasons given for that action. Even if a trial court is mistaken in its reasoning or logic, no determination that such an error was prejudicial will be made, if the underlying decision is correct. (*Ibid.*; 9 Witkin, Cal. Procedure, *supra,* § 348, p. 399.)

With those rules for review of the record set forth, we address the new trial request regarding the special verdict on fraud. This includes an examination of the alleged evidentiary error in granting the motion in limine to restrict expert testimony on the role of Employer's policies and manuals, as applied to the deposition testimony given, about whether a serious risk was created about potentially false confessions. We then evaluate whether the legal rulings on the UCL issues are supported by the record. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 312 (*Tobacco II Cases*).)

II

FRAUD/CAUSATION RULES

To analyze the new trial arguments, we look to whether substantial evidence supports the jury verdict in favor of Employer. Plaintiffs made out most of the elements of their prima facie case of fraud, but the jury found their reliance on the false representations not to be "substantial factors" in causing their harm. We next set forth basic causation principles, in both fraud and negligence cases, and then address the evidentiary error claimed about the exclusion of certain expert testimony.

First, however, we reject Employer's theories in its respondent's brief that litigation privilege should properly have been invoked to protect against all claims arising out of its investigations and communications with law enforcement authorities about these matters. (Civ. Code, § 47, subd. (b).) The trial court denied such a defense request to hold a bifurcated trial on the affirmative defense of that privilege. That was an appropriate ruling, because an extensive course of private conduct was relied on by Plaintiffs, other than mere communications in preparation for litigation. (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 345.) Plaintiffs contended wrongful conduct took place before and during the interviews, and in the events leading up to the summoning of law enforcement and the arrests. The trial court was not required on those facts to grant the request to bifurcate a privilege defense.

A. Causation Rules for Fraud Cases

The authors of 5 Witkin, California Procedure, *supra*, Pleading, section 730, pages 148 to 150 outline the complexity of the appropriate analysis of causation in fraud cases:

"The causation aspect of actions for damages for fraud and deceit is confusing because of its multiple nature. It appears to involve three distinct elements: Actual reliance, damage resulting from reliance [citation], and right to rely or justifiable reliance [citations]. [¶] The first of these, actual reliance, is a combination of the plaintiff's belief in the truth of the representations and his or her action in response to the belief. The plaintiff must plead that he or she believed the representations to be true (or was ignorant of their falsity—which amounts to the same thing), and that in reliance on this belief (or induced by it), he or she entered into the transaction . . . ."

In some cases, a pleading of fraud (right to rely on false representations), may be deemed sufficient, even if a plaintiff were negligent, if there is pled "sufficient excuse in allegations showing lack of business experience on the part of plaintiff. And even without that excuse justifiable reliance may be simply pleaded. [Citations.]" (5 Witkin, Cal. Procedure, *supra,* § 733, p. 155.) These Plaintiffs held the positions of parts sales managers, who were shift managers, but also fairly low-level salaried employees. They described themselves as lacking significant business experience, and contend they were confused and misled by Employer's sophisticated loss prevention system. The jury agreed Plaintiffs had reasonably relied on certain important representations made by Employer, but that amounted to only a partial finding of causation. "The essential element of causation is lacking unless the plaintiff sets forth facts to show that his or her actual reliance on the representations was justifiable, so that the cause of the damage was the defendant's wrong and not the plaintiff's fault. [Citation.]" (5 Witkin, Cal. Procedure,

supra, § 732, pp. 152-154, citing, e.g., *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 739; *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 640.)

Thus, "[f]raud is not actionable unless it results in some injury; hence, injury or damage is an essential element of the cause of action. In the tort action the injury is pecuniary damage; in an action based on rescission the injury may be the undesirable contract that would not have been made except for the fraud. Whatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representations must be shown." (5 Witkin, Cal. Procedure, *supra,* § 731, p. 150.)

In *Tobacco II Cases,* the Supreme Court confirmed that reliance is the causal mechanism of fraud. The court used a somewhat different substantial factor formulation, referring to fraud cases such as *Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1110-1111 and *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976-977, and said: " '[R]eliance is proved by showing that the defendant's misrepresentation or nondisclosure was "an immediate cause" of the plaintiff's injury-producing conduct. [Citation.] A plaintiff may establish that the defendant's misrepresentation is an "immediate cause" of the plaintiff's conduct by showing that in its absence the plaintiff "in all reasonable probability" would not have engaged in the injury-producing conduct.' [Citation.]" (*Tobacco II Cases, supra,* 46 Cal.4th 298 at p. 326; see e.g., *Spinks v. Clark* (1905) 147 Cal. 439, 444, relying on an historic edition of Pomeroy's Equity Jurisprudence, § 890, for the "immediate cause" language.)

Therefore, although a plaintiff must show that the misrepresentation was an "immediate cause" of the injury-producing conduct, it need not be demonstrated to be the only cause. " ' " 'It is not . . . necessary that [the plaintiff's] reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor influencing his conduct. . . . It is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing his decision.' " [Citation.] [¶] Moreover, a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material. [Citations.]' " (*Tobacco II Cases, supra,* 46 Cal.4th 298 at pp. 326-327.)

This record supports inferences that the justifiable reliance element was met--as far as it goes. We next ask if the misrepresentations were proved to be "immediate causes" of the Plaintiffs' own injury-producing conduct, and the term "immediate" brings in considerations of the timing of that conduct, as part of a chain of causation.

B. Type of Injury/Damage "Caused" by Fraud

The parties seem to be very confused about the elements of causation and damage. Plaintiffs' opening brief argues they had the burden to, and did, establish that the Jaras' conduct caused false confessions. Employer criticizes that approach, and claims that Plaintiffs had the burden to prove that the Jaras' conduct caused damages to them. The language of the special verdict speaks in terms of the jury being required to determine whether each Plaintiff's reliance on Jara's representations was a substantial factor in causing harm to the Plaintiff. The only cause of action for damages still argued on

appeal, fraud, alleged such economic harm in terms of lost wages and expenses incurred in defending the criminal matters.

In fraud cases, special considerations apply about the allowable type of damages. These Plaintiffs did not seek wrongful termination damages, nor did they succeed on any false imprisonment claims, nor were their claims of humiliation or emotional distress substantiated. However, they pled economic loss in terms of criminal defense costs incurred and lost wages, on the basis that they were forced into the position of signing confessions or the promissory note, leading to criminal prosecution in two cases. This chain of events, they say, was substantially due to the conduct of Employer in "procuring" false confessions. (Since this is not a legal malpractice case, we do not find the authorities about "proof of actual innocence" persuasive; e.g., *Wiley v. County of San Diego* (1998) 19 Cal.4th 532.)

The negligence concepts of cause in fact and proximate cause allow, for example, a determination that if an independent intervening act occurs, that was not reasonably foreseeable, "the defendant's conduct is not deemed the 'legal' or proximate cause" (even if that conduct was a cause in fact of the injury). (6 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 1186, p. 553, citing *Mitchell v. Gonzales* (1991) 54 Cal.3d 1041.) The proximate causation question is usually one of fact, unless only undisputed facts are presented. (*Hoyem v. Manhattan Beach City School Dist.* (1978) 22 Cal.3d 508, 520; 6 Witkin, Summary of Cal. Law, *supra*, § 1184, pp. 551-552.)

Brewer v. Teano (1995) 40 Cal.App.4th 1024 is a negligence case that discusses the concept of superseding cause as it relates to different kinds of alleged injury,

including from an arrest. That case arose from an incident in which one Teano repeatedly collided with the plaintiff's car, and the plaintiff left the accident scene for fear of assault (and was later arrested for hit and run). The plaintiff sued the estate of Teano, seeking compensation for physical and emotional injury and property damage, as well as "expenses incurred as a result of the ensuing arrest and prosecution." (*Id.* at p. 1027.) The court concluded that (1) the prosecutor's later filing of felony charges against plaintiff, and the magistrate's holding him to answer "were superseding acts for which Teano's estate is not liable" (*ibid.*); however, (2) plaintiff had pleaded a viable action in negligence against the estate for damage to property and personal injuries; and (3) the demurrer was incorrectly sustained because the pleading itself did not provide an adequate basis to assess the remaining superseding cause issues (on the injury claimed from the arrest itself and emotional distress). (*Ibid.*) The court noted, "Depending on the circumstances, an arrest by police may or may not be a superseding cause, cutting off liability for what has gone before. [Citations.] But unlike the issue of superseding cause as it relates to the criminal prosecution, where enough may be gleaned to decide the legal issues, the complaint is too sparse to justify a conclusion that the arrest was superseding as a matter of law. . . . Resolution of the causation issue will have to await development of the facts, [on those types of damages claim]." (*Brewer*, *supra*, 40 Cal.App.4th at p. 1037, quoted at 6 Witkin, Summary of Cal. Law, *supra*, § 1218, pp. 595-596.)

Such authorities require us to look to the entire chain of causation in determining whether the immediate or substantial factor cause of these alleged fraud damages was Employer's misrepresentations, or Plaintiffs' own fault, taking all the relevant time

periods into account. Before we look to the record to determine if substantial evidence supports the zero damages verdict on fraud, we consider Plaintiffs' claims of prejudicial evidentiary error.

C. Analysis of Evidentiary Error Claims: Expert Testimony

"The trial court is 'vested with broad discretion in ruling on the admissibility of evidence.' [Citation.] '[T]he court's ruling will be upset only if there is a clear showing of an abuse of discretion.' [Citation.] ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citation.]' [Citation.]" (*Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431; *City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 900.) In general, appellate courts will not reverse a trial court judgment unless an examination of the record and evidence requires a conclusion that the claimed error was prejudicial, so that a more favorable result for the appellants would have been reached in the absence of such error. (Cal. Const., art. VI, § 13; *In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

Under Evidence Code section 801, subdivision (a), permissible expert opinion testimony is limited to such opinion as is: "Related to a subject that is *sufficiently beyond common experience that the opinion of an expert would assist the trier of fact."* (Italics added.) As explained in *Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 972-974, an expert's opinion testimony, if otherwise admissible, will not be objectionable where it embraces an ultimate issue to be decided by the trier of fact. (Evid. Code, § 805.) The

expert may not, however, take over the function of the factfinder by resolving and directing the resolution of an ultimate issue in a case. (*Piscitelli, supra,* at p. 974.)

In *Kotla v. Regents of University of California* (2004) 115 Cal.App.4th 283, the court restated this standard to say that expert opinion should be excluded " ' "when 'the subject of inquiry is one of such common knowledge that men of ordinary education could reach a conclusion as intelligently as the witness.' " ' [Citations.]" (*Id*. at p. 291.)

Plaintiffs contend the trial court abused its discretion in excluding certain expert opinion evidence from Dr. Ofshe, a sociologist, that would have bolstered their theory of causation of their harm by the actions of Employer. Plaintiffs presented extensive evidence about the incidents and Employer's procedures and policies for loss prevention, including training that loss prevention managers received in the use of the company interviewing manual ("Investigative Interviewing, An Investigator's Guide To Interviewing" (the manual)). It sets forth methods and interview techniques to use in interviewing employees accused of theft. Generally, those methods recommended that managers try to persuade suspected employees to "rationalize, minimize, project blame," about the circumstances, and to confess guilt.

Plaintiffs opposed Employer's motion in limine that sought to restrict Dr. Ofshe's testimony from including his opinions drawn from his review of the depositions of the Plaintiffs and Employer's two investigators, the Jara brothers. Plaintiffs argued that the expert's review of the manual and his studies of false confessions, together with his review of the deposition testimony from both sides, would be used to create permissible expert opinion that the techniques suggested in the manual could possibly cause false

confessions. Plaintiffs argued that their expert should be able to address these issues, because these loss prevention personnel had actually done very little preliminary investigation, "and in this case there will be almost no evidence that any crime actually happened (especially with regard to Cortez)."

The trial court ruled that the expert would be allowed to testify about the manual's contents, and how the tactics described in it can potentially cause a coerced confession. However, the expert would not be allowed to relate those theories to the evidence in this case, nor to explain the existence of certain safeguards that he thought should have been provided but were not. The court ruled that such proposed testimony would invade the province of the jury, as going to ultimate issues.

This court dealt with similar issues in a criminal context in *People v. Son* (2000) 79 Cal.App.4th 224, 240-241.) Expert testimony is a highly discretionary area for the trial court, and we upheld the trial court's ruling (also Judge Link) to exclude the same expert sociologist's opinion testimony on false confessions, where that criminal defendant had explained in court why he confessed falsely (due to an offer of leniency). We concluded that was the type of subject that the laypersons on the jury could understand and evaluate, without the assistance of expert testimony. Also, there was no evidence that the police had actually used the kind of tactics that the expert would describe (to wear the defendant down into making a false admission), so any expert opinion about such tactics was unnecessary. (*Ibid.*; see *People v. Ramos* (2004) 121 Cal.App.4th 1194, 1204-1207 [expert opinion that is speculation based on items not in the record is not proper].)

It is questionable whether Plaintiffs have adequately preserved this claim of error, because they appeared to agree to abide by the ruling of the trial court, to obtain expert interpretation of the manual and whether it had certain practices identified in it that could lead to a coercive interrogation, and they stayed away from any expert interpretation of deposition testimony of Plaintiffs or Employer's agents. However, Plaintiffs argue on appeal that the expert should have been permitted to testify, based on the depositions, that what the Plaintiffs described was psychological coercion, although they agree that credibility determinations would be left up to the jury. Plaintiffs also believe the expert should have been allowed to offer opinions about the merits of the investigation practices (e.g., by referring to Jara's testimony about not verifying facts given him by Plaintiffs). Plaintiffs have not pointed out in the record how those arguments were sufficiently preserved through continuing objections to the ruling at trial. (*JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 178.)

Assuming that no waiver took place, the trial court appropriately excluded this opinion evidence under the standards set forth above. The proposed testimony amounted to the expert's personal beliefs and interpretations of the particular facts of this case, as learned from the Plaintiffs' and Employer's agents' deposition testimony. It was the role of the jury to draw conclusions from the same evidence, to decide the ultimate facts about the validity of the interrogation methods used and the nature of the responses given. The proposed expert opinion would have duplicated or interfered with that function. Under an abuse of discretion standard, no prejudicial error occurred in this ruling. (*City of Ripon v. Sweetin*, *supra*, 100 Cal.App.4th 887, 900.)

D. Special Verdict --Elements and Showings (Substantial Factor Causation; Evidentiary Support)

Disputed factual issues resolved by the finder of fact are reviewed under this test: Substantial evidence is "evidence of 'ponderable legal significance, . . . reasonable in nature, credible, and of solid value.' [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873; *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.) In determining its existence, we look at the entire record on appeal rather than simply considering the evidence cited by a party. (*Bowers, supra,* at p. 873.) "The ultimate determination is whether a reasonable trier of fact could have found for the respondent based on the whole record. [Citation.] While substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations]." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633, italics omitted.)

For purposes of examining the evidence, we evaluate Plaintiffs' showing that there was an immediate causative link between the loss prevention practices used by Employer and the economic loss asserted by the Plaintiffs (their criminal defense expenses or lost wages, as related to reliance on the representations). Plaintiffs had the burden of supplying facts from which the requested inferences could reasonably be drawn or extended. In the evidence presented at trial, both Gomez and Santana told the jury that they were now truthfully denying any theft had occurred, and their previous criminal pleas of guilty were wrongfully based upon Employer's misrepresentations, or upon

instructions given them by the criminal defense attorneys. Both such attorneys testified to the contrary that there were no such instructions.

Plaintiffs' true theory appears to be that "AutoZone's conduct in coercing confessions so undermined the proper functioning of the adversarial process in the criminal justice system that a just result was not obtained." However, their guilty pleas are not subject to collateral attack here, and the evidence undermines their theory that their guilty pleas were "procured by use of the fraudulently induced confessions." When the entire chain of causation and the timing of the various events are considered, the jury could have reasonably concluded that the "immediate cause" of the alleged fraud damage was the underlying criminal conduct by Plaintiffs. Employer proved in this case that they had taken money or merchandise without paying for it, at a time before any of these misrepresentations were made, and this constituted a superseding or substantial factor cause of any damages to them.

For example, in Santana's case, testimony was presented about O. Jara's pre-interview investigation into inconsistencies in Employer's computerized accounting system, which showed that while Santana was working, he was skimming cash payments received from commercial customers, without reconciling them to the cash drawers at the store. Although Santana originally told his attorney, Orsatti, that he was not guilty, eventually Santana confessed to Orsatti that he had taken money.

As to Gomez's claim, he admitted that during his interview, R. Jara presented him with copies of store deposit slips signed by Gomez. R. Jara testified that he had been asked by store management to investigate cash that was missing, according to store

records of money taken in and money deposited. The store kept a cash sweep log that showed Gomez had initialed a particular envelope of cash amounting to $1,013. R. Jara testified that those records connected Gomez to this investigation of this particular amount, and Gomez admitted to him that he had taken that money.

Regarding Cortez, the jury heard evidence that when the Jaras investigated a car that was pulled up to the front of the store, just before closing time, loaded with bags of merchandise, they learned that it belonged to Cortez. During the interview, Cortez stated he did not have a receipt and later admitted to O. Jara that he had not paid for the goods. His manager testified against Cortez's version that the manager told him he could take merchandise home on a trial basis and pay for it later. Cortez signed a $7,000 promissory note, and did not prove his theory that this figure was chosen by Jara as representing all the missing inventory from the store, whether Cortez was responsible for it or not.

The trial court had an adequate basis in the evidence to reject Plaintiffs' various theories of entitlement to new trial, because the zero damages verdict was appropriate and was supported by the trial record. The evidence of the conduct by Plaintiffs, in total, was inconsistent with their claims but for Employer's misrepresentations, Plaintiffs were entitled to continued employment and no criminal liability or expenses. Rather, Employer was able to show the jury, and the court, that there was no direct or immediate chain of causation between the misrepresentations made by Employer's agents, and the economic harm sustained by these Plaintiffs, on a fraud theory.

III

UCL RULING

A. Procedural Status and Standards of Review

To reiterate, we will take it as established by the special verdict findings that during the interviews of the Plaintiffs, they did reasonably rely on false representations, as the Jaras intended. Although it is unclear why additional findings were requested in such a sequence, Plaintiffs further proved to the satisfaction of the jury, by clear and convincing evidence, that those knowingly false representations of important facts to Plaintiffs were made by a managing agent of Employer, with malice, oppression, or fraud. However, with regard to the final fraud element, the jury found any such reliance on the representations was not "a substantial factor in causing harm" to the Plaintiffs.

Both the judgment and order denying new trial rejected Plaintiffs' UCL claims. In the judgment, the court made a finding that Plaintiffs had not proved their claim of any unfair or unlawful business practice under that statutory scheme. (Code Civ. Proc., § 438, subd. (c).) In the new trial order, the court further stated that it agreed with the jury's finding that Autozone did not falsely imprison the plaintiffs (Gomez), and "[t]he Court further finds, beyond a reasonable doubt, that all three plaintiffs stole from their Employer. The Court finds no violation under Business & Professions Code § 17200."

Plaintiffs challenge the denial of new trial on this ground by arguing the trial court drew erroneous legal conclusions from the factual record presented to the jury. In response, Employer initially argues that Plaintiffs failed to timely request a statement of decision on any separate court proceedings that were anticipated or required on the

equitable UCL issues, so that all necessary findings may be implied to uphold the judgment. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.)

During the hearing on the motion for new trial, the court fully discussed with counsel whether Plaintiffs had adequately preserved their position that they were entitled to a posttrial legal ruling on the UCL claim, after the special verdict was received on the fraud issues. Although the court acknowledged there had been some confusion during and after trial about the correct procedure to be used in disposing of the UCL issues, the court expressly proceeded to make a ruling on the merits that no claim had been proven under the UCL, based upon the evidence presented at trial. No separate record was necessary or created on the UCL issues at that juncture, and the court adequately dealt with all the issues presented in the context of the new trial proceedings. We reject Employer's argument that Plaintiffs were required to request a separate statement of decision on the UCL issues of law. (Code Civ. Proc., § 632 et seq.)

Those same legal issues, however, were properly brought before the trial court in the new trial motion, on the evidentiary record developed at trial. The court independently assessed the record and found that Employer's loss prevention personnel did not engage in illegal activity, within the definitions of the UCL. As already stated, we will not re-examine the substantial evidence issues regarding the jury's determination that Plaintiffs' reliance on the false representations made by Employer's agents was not a substantial factor in causing the harm to Plaintiffs. However, the new trial motion presented the court with separate legal questions of whether these Plaintiffs had adequately shown Employer's interview practices had been in violation of UCL legal

standards. (*Tobacco II Cases, supra*, 46 Cal.4th 298, 311 [language of the UCL presents questions of law to be reviewed de novo].) We next outline the parameters of UCL protections.

B. Substantive UCL Standards

Under the reliance and causation analysis presented in *Tobacco II Cases, supra,* 46 Cal.4th 298, "[t]he fraudulent business practice prong of the UCL has been understood to be distinct from common law fraud. 'A [common law] fraudulent deception must be actually false, known to be false by the perpetrator and reasonably relied upon by a victim who incurs damages. None of these elements is required to state a claim for injunctive relief' under the UCL. [Citations.] This distinction reflects the UCL's focus on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices. [Citation.]" (*Tobacco II Cases, supra*, 46 Cal.4th 298, 312.)

The substantive rights of the public under the UCL include the " ' "right to protection from fraud, deceit and unlawful conduct." ' " (*Prata v. Superior Court* (2001) 91 Cal.App.4th 1128, 1137.) In *Tobacco II Cases, supra*, 46 Cal.4th 298, the Supreme Court emphasized that Proposition 64 did not eliminate private representative actions that seek protection of Californians from unfair business practices. "In the post-Proposition

64 era, as before, such actions continue to 'supplement the efforts of law enforcement and regulatory agencies.' [Citation.]" (*Tobacco II Cases, supra*, at p. 317.)[5]

In our case, Plaintiffs have pled their UCL claims not only in terms of fraud, but more generally in terms of unfair competition, specifically, Employer's use of fraudulent tactics against their employees, in order to gain an unfair advantage over Employer's business competitors, by maximizing profits and minimizing losses, through exercising maximum control over its employees, sometimes unfairly. As private representative plaintiffs, they sought an injunction for the purpose of requiring compliance with wage and hour statutes, to prevent the use of allegedly coerced promissory notes that reduced payment for hours worked.[6]

In *Tobacco II Cases*, the court held that a class representative must be capable of demonstrating traditional standing in terms of alleging actual injury and causation, including actual reliance on acts of unlawful or fraudulent competition. However, a less stringent rule was used for the required showing of standing for a potential class member. Those principles must be adapted to the facts before us, in which the plaintiffs seek to

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5 Review was recently granted in a case examining standing requirements (loss of money or property) based on purchase of a product in reliance on misrepresentations in the label about characteristics of the project, *Kwikset Corp. v. Superior Court*, review granted June 10, 2009, S171845.

6 In *Tobacco II Cases, supra,* 46 Cal.4th at page 320, footnote 13, the court says: "It is conceivable that a named class representative who met the standing requirements under Proposition 64 could pursue a broad-based UCL class action in which only injunctive relief was sought on behalf of a class that was likely to, but had not yet, suffered injury arising from the unfair business practice. We need not decide here whether such an action would be proper."

pursue a private representative action, but were individually unable to prove causation of their harm. We accordingly review whether the trial court correctly denied the new trial request as to the UCL issues, based on the evidence about the experiences of these Plaintiffs and any related claims they had that the affected public may be entitled to injunctive or restitutionary relief.

C. Review of New Trial Order

When ruling upon the request for new trial, "the trial judge is not bound by any 'rule of conflicting evidence.' The judge does weigh the evidence, and he or she may and should grant a new trial if the verdict or decision is against the weight of the evidence. [Citation.]" (8 Witkin, Cal. Procedure, *supra*, § 39, p. 625.)

At the hearing on the new trial motion, the court set out its findings on the equitable UCL issues, stating correctly that it was not bound by the jury's decision regarding the facts. The court acknowledged that it had to decide whether the elements of the UCL claim had been met in the evidence, which it had again reviewed. The court stated that Employer had probable cause in each of the three instances to believe that the employees had stolen from it, and Employer had a policy to require an interview and to ask for a statement to back up any Employer disciplinary action. The court then noted that what Employer had done here was "nothing more than a police officer would do in a situation where they had a suspect." The evidence did not show that Employer's agents had engaged in illegal activity, such as false imprisonment or physical abuse, but instead had told the employees they were free to go if they wished. The court noted that the lies told to the employees by the loss prevention officers, about corroborating evidence or

leniency, did not amount to violations of the law, in the context of seeking to obtain a confession.

We examine the trial court's analysis in terms of the scope of protections afforded by the UCL. These issues do not require us to engage in any detailed analysis of the standing requirements of the UCL, in this fast-developing area of the law. The trial court evaluated the merits of the UCL cause of action and we will do likewise.

A representative plaintiff must allege and prove an "injury in fact" that is " '[a]n actual or imminent invasion of a legally protected interest, in contrast to an invasion that is conjectural or hypothetical.' [Citation.]" (*Hall v. Time Inc.* (2008) 158 Cal.App.4th 847, 853; see also *Buckland v. Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4th 798, 814.) No fraud or other private damages are recoverable in a UCL action, although the equitable remedy of restitution of funds improperly received may be ordered. (*Tobacco II Cases, supra*, 46 Cal.4th at p. 312.)

To assess if Plaintiffs proved actual injury from any invasion of a legally protected interest, we turn to the factually analogous context of the treatment of intentional torts within the workers' compensation system. In *Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701 (*Fermino*), the Supreme Court outlined the parameters of the merchant's privilege to make reasonable attempts to investigate employee theft, including employee interrogation. Such investigation is a "normal part of the employment relationship," so long as any interrogation or confinement remains voluntary on the employee's part. (*Id.* at p. 717; Pen. Code, § 490.5, subd. (f)(1); *Collyer v. S.H. Kress & Co.* (1936) 5 Cal.2d 175, 180-181 [the merchant's privilege is a defense to a false imprisonment action].) The

analysis in *Fermino* determined whether, within the workers' compensation system, an employee's civil action for false imprisonment would always undermine the exclusivity provisions of that compensation system. (*Fermino, supra*, 7 Cal.4th 701, 722.) The court said it would not, where a false imprisonment of an employee in the interrogation context was done by an employer that was acting outside of its proper role, beyond reasonableness and into criminality. (*Ibid*.)[7]

The court in *Fermino* summarized this rule for analyzing intentional torts, within the workers' compensation context: Any legitimate inquiry into an employer's motivation "is undertaken not to determine whether the employer intentionally or knowingly injured the employee, but rather to ascertain whether the employer's conduct violated public policy and therefore fell outside the compensation bargain." (*Fermino, supra,* 7 Cal.4th 701, 714-715.)

In another comparable situation, plainclothes store detectives are treated differently from police officers, regarding the appropriateness of procedures for the detention and questioning of a suspected shoplifter. (*In re Deborah C.* (1981) 30 Cal.3d 125, 130-133 [store detectives not required to follow *Miranda* procedures before eliciting

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7 *Fermino, supra*, 7 Cal.4th 701, 713-714 outlines a three-pronged system in the workers' compensation context for classifying injuries arising in the course of employment: "First, there are injuries caused by employer negligence or without employer fault that are compensated at the normal rate under the workers' compensation system. Second, there are injuries caused by ordinary employer conduct that intentionally, knowingly or recklessly harms an employee, for which the employee may be entitled to extra compensation under section 4553. Third, there are certain types of intentional employer conduct which bring the employer beyond the boundaries of the compensation bargain, for which a civil action may be brought."

incriminating statements, because of the lack of the same "compelling atmosphere" found in a custodial interrogation by police]; 5 Witkin, Cal. Criminal Law (3d ed. 2000) Criminal Trial, § 117, pp. 192-193.)

In the case before us, Plaintiffs did not show false imprisonment, but they nevertheless contend that Employer's conduct towards them, by making knowingly false representations during the interrogation process, on which they reasonably relied, amounted to nonprivileged conduct that violated public policy as set forth by section 17200 (disallowing unfair or fraudulent competition). Plaintiffs seek some kind of injunction and restitution for the business practice (e.g., expenses of criminal defense).

As already discussed (pt. II, *ante*), the substantial factor test was dispositive regarding the lack of proof of Employer's causation of harm to these individual Plaintiffs, when all of the circumstances and the entire chain of causation are considered (including events that took place before and after Employer's loss prevention interviews).

" '[R]eliance is proved by showing that the defendant's misrepresentation or nondisclosure was "an immediate cause" of the plaintiff's injury-producing conduct. [Citation.] A plaintiff may establish that the defendant's misrepresentation is an "immediate cause" of the plaintiff's conduct by showing that in its absence the plaintiff "in all reasonable probability" would not have engaged in the injury-producing conduct.' [Citation.]" (*Tobacco II Cases, supra,* 46 Cal.4th at p. 326.)

As recently noted in *Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 147, a representative plaintiff in a private UCL action must be able to demonstrate actual economic, rather than "moral injury" (e.g., the defendants' alleged

violation of animal anticruelty laws could not support UCL action because the Plaintiffs did not purchase from defendant any dairy products "of inferior quality"). Likewise: the UCL's "lost money or property" requirement seems to "limit standing to individuals who suffer losses . . . that are eligible for restitution." (*Buckland v. Threshold Enterprises, Ltd., supra,* 155 Cal.App.4th at p. 817, see also *Citizens of Humanity, LLC v. Costco Wholesale Corp.* (2009) 171 Cal.App.4th 1, 22.) Restitution is normally defined as restoring a status quo (returning funds). (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1149.)

These Plaintiffs did not prove to the jury that they were "substantially" caused by Employer's misrepresentations to take certain actions that resulted in their economic loss, such as their criminal defense expenses or lost wages. We think this fatally undermines their UCL claims as well. The judge's comments in ruling on the motion for new trial demonstrate that the court understood its duty to examine the record evidence in light of all the applicable UCL authorities. The trial court essentially rejected the jury's findings of malice and oppression, as unsupported by the evidence, because Employer's showing about the nature and extent of the investigations and interviews that were carried out convincingly demonstrated to the court that no illegal Employer conduct had taken place. The court candidly stated that lies had been told, but within the boundaries of what would be appropriate investigations in the comparable situation of a police investigation, and no physical abuse or false imprisonment had taken place. The conduct of Employer's loss prevention investigators was not so egregious as to amount to fraudulent business practices that would violate the UCL. The court made these rulings of law on the record

developed at trial, and no prejudicial error has been demonstrated. (*Plancarte v. Guardsmark, LLC*, *supra*, 118 Cal.App.4th 640, 645.) The judgment and posttrial orders must be affirmed.

DISPOSITION

The judgment and posttrial orders are affirmed. Costs are awarded to AutoZone.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.